REMARKS/ARGUMENTS

In the Office Action of May 3, 2006, restriction to one of the groups of Claims 1-14 (Group I), drawn to a flexible marking catheter for placement in a selected position in a body using a frameless stereotaxy system, and Claims 15-33 (Group II), drawn to a method of using a flexible marking catheter for placement in a selected position in a body using a frameless stereotaxy system, was required under 35 U.S.C. § 121.

Applicant hereby elects with traverse the Claims of Group I (Claims 1-14) for consideration in the present application.

Applicant respectfully requests reconsideration and withdrawal of the restriction requirement for the following reasons.

The claims of Groups I and II are related as a product and process of use. The claims of these two groups can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). There is no suggestion in the Office Action that the process for using the flexible marking catheter as featured in the claims of Group II can be practiced with a materially different product from the flexible marking catheter featured in the claims of Group I.

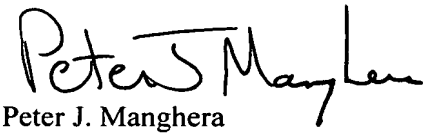
In the Office Action the Examiner states that the product, a flexible marking catheter for placement in a selected position in the body using a frameless stereotaxy system, can be used in a materially different process of using that product from placing a flexible marking catheter in a selected position in a body using a frameless stereotaxy system. As an example, the Examiner states that instead of being mounted on a frameless stereotaxy system probe, the flexible marking catheter could be used by itself to measure the depth of an organ. Applicant respectfully submits, however, that the alternative use suggested by the Examiner cannot be accomplished in any practical manner.

Applicant does not disagree that the flexible marking catheter featured in the claims of Group I could be used to measure the depth of an organ. However, in order to be used for such a purpose the flexible marking catheter must be placed within or adjacent to the organ to be measured. Thus, a flexible marking catheter must be placed in a selected position in a body in order to obtain the measurements suggested. The flexible marking catheter featured in the claims of Group I is sized to removable fit on a frameless stereotaxy system probe such that the catheter may be positioned in a body using the probe. (*See* Claim 1.) Thus, it is

respectfully submitted that the only practical way of using the flexible marking catheter, including to measure the depth of an organ, is to place the flexible marking catheter in a selected position in a body using a frameless stereotaxy system. The claims of Group II (*see, e.g.*, Claim 15) are specifically drawn to such a method of providing such a flexible marking catheter, mounting the flexible marking catheter on a frameless stereotaxy system probe, and then positioning the flexible marking catheter in a selected position in the body using the frameless stereotaxy system probe. Thus, it is respectfully submitted that the flexible marking catheter for placement in a selected position in a body using a frameless stereotaxy system as featured in the claims of Group I cannot be used in a materially different process from using the flexible marking catheter for placement in a selected position in a body using a frameless stereotaxy system as featured in the claims of Group II. Thus, it is respectfully submitted that the claims of Group I and the claims of Group II are not, in fact, distinct and, therefore, that the restriction requirement should be withdrawn.

Favorable action on the present application is respectfully requested.

Respectfully submitted,



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Attachments

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